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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: Dissolution of DOEHLER DRY INGREDIENT SOLUTIONS, LLC, a Delaware Limited Liability Company	: : :	C.A. No. 2022-0354-LWW

RESPONDENTS DOEHLER NORTH AMERICA INC., STUART MCCARROLL, AND ANDREAS KLEIN'S
BRIEF IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Respondents Doehler North America Inc. ("***DNA***"), Stuart McCarroll ("***McCarroll***"), and Andreas Klein ("***Klein***") (collectively, DNA, McCarroll, and Klein are referred to herein as "***Respondents***"), through their undersigned counsel, hereby submit the following brief in support of their motion to dismiss the *Petition to Dissolve Doehler Dry Ingredients Solutions, LLC* (the "***Petition***") filed by Petitioner Russell Davis ("***Davis***"), through his controlled entity Crosskeys Associates Limited ("***CKAL***").

Davis's Petition is an attempt to enlist this Court in a campaign to circumvent agreements Davis regrets entering. As he acknowledges in the Petition, Davis filed his Petition to dissolve Doehler Dry Ingredients Solutions, LLC ("***DDIS***") only *after* DNA first filed an action in the United States District Court for the District of Delaware (the "***Federal Court***"), styled *Doehler North America Inc. v. Russell Lee Davis & Crosskeys Associates Limited*, Case No. 1:22-cv-00501-RGA (D. Del. 2022) (the "***Federal Litigation***"). In his Petition, Davis mischaracterizes the gravamen of the Federal Litigation and neglects to mention that, in this first-filed Federal Litigation, DNA seeks specific performance of Davis's and CKAL's mandatory contractual obligation to sell their membership units in DDIS to DNA on those terms set forth in the Operating Agreement for DDIS. The terms of the mandatory cross-purchase provision in the Operating Agreement are not as

lucrative to Davis as a dissolution of DDIS would be, so Davis brought this dissolution action in the hope that this Court will override the mandatory cross-purchase provision by dissolving DDIS.

There is no basis for the Court to entertain Davis's request and to provide Davis with a windfall contrary to what was expressly agreed to by the members of DDIS. The Petition's vague and amorphous allegations concerning "[i]rreconcilable differences" fail to state claims for dissolution and winding up affairs under Delaware law, which are fatally defective on their face. The Petition separately fails to set forth any basis for adding Klein or McCarroll as individual respondents – or even attempts to allege any claim against either Klein or McCarroll at all. The addition of Klein and McCarroll as individual respondents could only be intended to harass and inconvenience them as they are not necessary or proper parties involving dissolution of DDIS. Regardless, in light of the first-filed Federal Litigation in the Federal Court, this Court lacks subject matter jurisdiction to entertain the Petition because the Court cannot simultaneously exercise *in rem* or *quasi in rem* jurisdiction over a *res* over which another court already has jurisdiction.

The Court should therefore dismiss the Petition in its entirety or, in the alternative, stay this action pending the resolution of the Federal Litigation but, nevertheless, still dismiss Klein and Carroll as individual respondents.

FACTUAL BACKGROUND

A. The Petition's Allegations.

The Petition seeks the judicial dissolution of DDIS, a Delaware limited liability company.[1] (Pet. ¶ 1.) Davis is a former manager of DDIS and, through CKAL, claims to own 25% of DDIS. (*Id.* ¶ 10.) Respondent DNA is a member of DDIS and owns 50% of DDIS. (*Id.* ¶ 13.) Respondent Garry Beckett ("***Beckett***") is a current manager of DDIS and owns 25% of DDIS. (*Id.* ¶ 12.) Respondent McCarroll is a *former* manager of DDIS. (*Id.* ¶ 14.) Respondent Klein is not even alleged to be a past or present manager of DDIS; instead, the Petition contends Klein is merely the chair of DNA's parent company, which, as indicated in exhibits to the Petition is located 4,000 miles away from Delaware in Darmstadt, Germany. (*Id.* ¶ 15, Ex. C.)

The Petition asserts judicial dissolution is appropriate because of various "irreconcilable differences among the members and managers." (Pet. ¶ 2.) Such "irreconcilable differences" allegedly consist of: (1) a Written Consent by the majority members removing Davis as a manager of DDIS and limiting his ability to invoice DDIS for compensation (*id.* ¶ 16)[2]; (2) disagreement by Davis as to the

[1] Notably, Davis did not seek dissolution under the dissolution provisions set forth in the Operating Agreement, but instead seeks judicial dissolution of DDIS.

[2] The Written Consent is attached as Exhibit B to the Petition.

applicability of a separate agreement among members of DDIS (*id*. ¶ 17)[3]; (3) the purportedly "untenable and impracticable" nature of Section 11(a) of the Operating Agreement (concerning the duties of DDIS's members) and Sections 14(a)-(b) (concerning tax matters and Davis's role therein) in light of the Written Consent (*id*. ¶¶ 18-19); (4) allegations that Beckett, in coordination with Klein, 'hacked' into Davis's e-mails and shared information with Klein (*id*. ¶¶ 20-22); (5) Beckett's purported competition with DDIS (*id*. ¶ 20); (6) alleged violations of the Operating Agreement in the form of incurring certain debt without unanimous member consent (*id*. ¶ 23); and (7) allegations that DNA violated the Operating Agreement with respect to its purchase of Davis's ownership interests in DDIS (*id.* ¶ 23).

The Petition further alleges that McCarroll, a former manager of DDIS, failed to act in DDIS's best interests in concert with DNA and Klein, but it is unclear whether Davis contends these allegations concerning a former manager form a part of his basis for judicial dissolution under current management or whether these immaterial allegations were intended for some other purpose. (Pet. ¶ 24.)

Based on these allegations, Davis asserts two claims. First, Davis seeks DDIS's judicial dissolution under 6 *Del. C.* § 18-802. (Pet. ¶¶ 25-26.) Second,

[3] The Operating Agreement is attached as Exhibit A to the Petition.

Davis seeks to wind up the affairs of DDIS under 6 *Del. C.* § 18-803, citing the requested dissolution as the requisite "good cause." (*Id.* ¶¶ 27-29.)

B. The Federal Litigation and Related Jurisdictional Facts.

Davis alleges in his Petition that the Federal Litigation was filed *before* Davis filed this action. (Pet. ¶ 1 n.1.) Davis contends that the Federal Litigation alleges Davis unlawfully competed against the LLC. (*Id.*) Davis both mischaracterizes the Federal Litigation and omits material facts about the Federal Litigation that bear on this Court's subject matter jurisdiction over this dissolution action. Accordingly, a copy of the publicly-filed and publicly-available Complaint in the Federal Litigation is attached hereto as Exhibit A.[4]

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[4] In considering the threshold issue of its own subject matter jurisdiction, this Court may consider matters extrinsic to the pleadings without converting the motion to one for summary judgment: "In deciding [a Rule 12(b)(1)] motion, the Court may consider documents outside the complaint. Therefore, the Court may properly consider the declarations submitted by Defendant without converting Defendant's motion to one for summary judgment." *Dewey v. Amazon.com*, 2019 WL 3384769, at * 2 (Del. Super. Ct. July 25, 2019); *Sloan v. Segal*, 2008 WL 81513, at *6 (Del. Ch. Jan. 3, 2008) ("This court has the discretion to consider evidence outside the pleadings in deciding motions under Rule 12(b)(1)-(5) . . . ."); *see also* Del. Ch. Ct. R. 12(b) (providing for the conversion of a motion to dismiss into one for summary judgment only "[i]f, on a motion asserting the defense number (6) for failure of the pleading to state a claim, matters outside the pleading are presented to and not excluded by the Court"). In addition, this Court may also take judicial notice of the Complaint in the Federal Action to establish when it was filed and the statements made in it. *See In re Rural Metro Corporation Shareholders Litig.*, 2013 WL 6634009, at *8 (Del. Ch. Dec. 17, 2013) ((citing *In re Santa Fe Pacific Corp. S'holder Litig.,* 669 A.2d 59 (Del. 1995)) ("Like the proxy statement in *Santa Fe,* this court could take judicial notice of the Farber Declaration to establish when it was filed or to identify the statements that Farber made.").

In the Federal Litigation, DNA asserts two causes of action against Davis and CKAL: (1) breach of Davis's contractual obligations to DNA under a contract among DNA, Davis, and others; and (2) breach of Davis's and CKAL's contractual obligations to DNA under the Operating Agreement with respect to DNA's mandatory right to purchase the membership units of DDIS held by Davis and CKAL. Among other things, in the Federal Litigation, DNA requests the specific performance of Davis and CKAL's obligations to transfer their membership units in DDIS to DNA.

ARGUMENT

The Petition's claims are fatally defective. First, in light of the first-filed Federal Litigation, this Court lacks subject matter jurisdiction over the "*res*" at issue in the Petition—namely, DDIS and the membership units therein. The United States District Court for the District of Delaware has already exercised control over the same *res* over which this Court must exercise jurisdiction to render the relief sought here. Both the Federal Litigation and this action require the respective courts to control the same membership units of DDIS: in the Federal Action, through specific performance compelling Davis and CKAL to transfer the units; in this action, through dissolution of DDIS. Because this action was filed second, this Court must yield to the prior exclusive jurisdiction of the Federal Court. The Petition should never have been filed, and this Court cannot consider the Petition

because it lacks the threshold subject matter jurisdiction to do so. Accordingly, the Petition must be dismissed or, at a minimum, stayed pending the resolution of the first-filed case.

Second, the Court lacks jurisdiction over Klein or McCarroll for purposes of this dissolution action. They are not necessary or proper parties. Indeed, the joinder of Klein and McCarroll to this dissolution proceeding appears predominantly aimed at annoyance and harassment of these respondents. Davis's theory of jurisdiction over Klein and McCarroll is bottomed on the conspiracy theory of jurisdiction, but Davis fails to allege sufficient facts or allegations that would give rise to jurisdiction under this theory. Moreover, in this dissolution action, neither McCarroll (a former manager of DDIS) nor Klein (an executive within the corporate structure of a member of DDIS but not himself a manager of DDIS) are necessary to render the relief requested or even capable of rendering it. The Petition fails to state a claim against either of those individual Respondents and they should be dismissed as individual respondents to this Petition.

Third, the Petition fails to state a claim upon which relief may be granted, as the threadbare allegations therein simply do not rise to the level of corporate dysfunction necessary to override the contractual agreement of DDIS's members and to dissolve DDIS. Put simply, there is no deadlock warranting dissolution, because DDIS's management is not paralyzed by a 50/50 governance structure.

I. This Court Lacks Subject Matter Jurisdiction.

Subject matter jurisdiction is a threshold issue. *Gen. Elec. Co. v. Star Techs., Inc.*, 1996 WL 377028, at *1 (Del. Ch. July 1, 1996) ("the Court's subject matter jurisdiction is a dispositive, threshold issue concerning the Court's power to act"). "The Court of Chancery will grant a motion to dismiss under Rule 12(b)(1) if it appears from the record that the Court does not have jurisdiction over the claim." *250 Exec., LLC v. Christina Sch. Dist.*, 2022 WL 588078, at *3 (Del. Ch. Feb. 28, 2022) (quoting *AFSCME Locs. 1102 & 320 v. City of Wilmington*, 858 A.2d 962, 965 (Del. Ch. 2004)). At least initially, the Court should determine jurisdiction "from the face of the complaint as of the time of filing, with all material factual allegations viewed as true." *See id.* (quoting *Int'l Bus. Machs. Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991)). Even so, motions under 12(b)(1) are more demanding for the non-movant than motions under 12(b)(6). *Abbott v. Vavala*, 2022 WL 453609, at *5 (Del. Ch. Feb. 15, 2022) (citing *Appriva Shareholder Litigation Co. v. EV3, LLC*, 937 A.2d 1275, 1284 (Del. 2007)). The petitioner bears the burden of proving jurisdiction, and the Court may consider matters outside the pleadings in determining its own subject matter jurisdiction. *Id.*; *Rummel Klepper & Kahl, LLP v. Del. River & Bat Auth.*, 2022 WL 29831, at *4 (Del. Ch. Jan. 3, 2022).

In addition to the state-law limits on the Court of Chancery's jurisdiction, the United States Supreme Court's decision in *Princess Lida of Thurn & Taxis v. Thompson* prevents two different courts from exercising jurisdiction over the same property simultaneously. *See generally* 305 U.S. 456 (1939). Instead, the first court to assume jurisdiction over contested property has *exclusive* jurisdiction over that property for the duration of the first-filed litigation, thereby barring a separate court in a second-filed action from simultaneously exercising jurisdiction of the same property:

> [I]t is settled that where the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or *must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought*[,] the jurisdiction of the one court must yield to that of the other. We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but *applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property*. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

Id. at 466 (emphasis added).

Under these principles, this Court is without subject matter jurisdiction in light of the first-filed Federal Litigation. One of the central claims in the Federal

Litigation is for the specific performance of Davis and CKAL's obligation under the Operating Agreement to sell their units in DDIS to DNA. [Ex. A 17, ¶ 66 ("DNA is entitled to specific performance requiring CKAL to sell and specific performance requiring Davis to cause the sale of CKAL's units of DDIS to DNA immediately for $44,486.14.").] The Federal Court has assumed *in rem* or *quasi in rem* jurisdiction over the units.[5] The Federal Court, however, cannot "effectively exercise the jurisdiction vested in it" with respect to those units and grant the requested relief "without a substantial measure of control" over the members' ownership interests in DDIS, control which this Court also needs in order to grant the Petition's request to dissolve and to wind up DDIS. *See Princess Lida*, 305 U.S. at 467. In fact, the very nature of the Petition suggests that it was specifically *designed* to thwart the Federal Court's jurisdiction, as dissolution of DDIS (as sought by Davis here) is more financially favorable to Davis than abiding by his cross-purchase agreement in the Operating Agreement (compliance with which is sought in the Federal Litigation).

Further, as Petitioner and this Court are undoubtedly aware, if Davis and CKAL are properly compelled to abide by the cross-purchase provision the Operating Agreement (as is sought in the Federal Action), then Davis and CKAL

[5] This Court has routinely characterized stock in a corporation as "*res*." *See, e.g.*, *Adams v. Clearance Corp.*, 116 A.2d 893, 896 (Del. Ch. 1955), *aff'd*, 121 A.2d 302 (Del Ch. 1956); *Smith v. Biggs Boiler Works Co.*, 85 A.2d 365, 366 (Del. Ch. 1951).

would lack *any* ownership interest in DDIS and, by extension, would lack standing to litigate the claims of the Petition. *Compare* 6 *Del. C.* § 18-802 (requiring an application for dissolution to be "by or for a member or manager") *with* Pet. ¶ 10 (claiming Davis owns 25% of DDIS, but acknowledging he is no longer a manager); *see also McElroy v. Schornstein*, 2012 WL 2428343, at *2 (Del. Ch. June 20, 2012) (where first-filed litigation would resolve issues in dissolution proceeding, second-filed dissolution proceeding dismissed)*; R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318, at *6 (Del. Ch. Aug. 19, 2008) ("This Court has recognized that third parties have no interest in dissolution under section 18–802 . . . .").

Until the conclusion of the Federal Litigation, the Federal Court's jurisdiction over the members' units in DDIS is exclusive, and this Court is without jurisdiction to decide the matters raised in the Petition. *See Princess Lida*, 305 U.S. at 467. Accordingly, the Court should dismiss the Petition in its entirety for lack of subject matter jurisdiction.

In the alternative, because the first-filed Federal Litigation will completely defeat Petitioner's standing in this dissolution action, while Respondents submit that dismissal of the Petition is the most appropriate resolution of Respondents' Motion to Dismiss, this Court may also stay this litigation pending the completion of the Federal Litigation. *See Amar v. Garnier Enters., Inc.*, 41 F.R.D. 211, 214,

218 (C.D. Cal. 1996) (noting the choice between the entry of dismissal or a stay is discretionary, but finding dismissal "more appropriate"). This Court previously has found that a stay of a summary statutory proceeding, such as dissolution, may be appropriate where there is a prior pending action elsewhere. *See McElroy*, 2012 WL 2428343, at *1; *see also McWane Cast Iron Pipe Corp. v. McDowell–Wellman Eng'g Co.,* 263 A.2d 281, 283 (Del.1970) (under the "*McWane* doctrine," where a Delaware action is *not* the first filed action, the policy that favors strong deference to a plaintiff's initial choice of forum requires the court freely to exercise its discretion in favor of staying or dismissing the later-filed Delaware action). Accordingly, the Court does not dismiss this action, then, at a minimum, the Court should stay this action until the Federal Action is finished.

II. This Court Lacks Personal Jurisdiction over Klein.

The plaintiff bears the burden of establishing personal jurisdiction. The Petition, therefore, suffers an additional jurisdictional defect: lack of personal jurisdiction over Klein. Accordingly, Klein should be dismissed as an individual respondent in this dissolution proceeding.

To assess a motion to dismiss for lack of personal jurisdiction, the Court must apply a two-step analysis: first, determine whether the Delaware's Long-Arm Statute is applicable and, second, evaluate whether the exercise of personal jurisdiction violates the Due Process Clause of the Fourteenth Amendment.

Onescreen Inc. v. Hudgens, 2010 WL 1223937, at *3 (Del. Ch. Mar. 30, 2010) (citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 (Del. 2005)). Davis has the burden here. It is his burden "to offer affirmative proof that these two steps are satisfied as to each defendant … [and] to point to sufficient evidence in the record to support a *prima facie* case that jurisdictional facts exist to support the two elements it must prove." *Hartsel v. Vanguard Grp., Inc*., 2011 WL 2421003, at *7 (Del. Ch. June 15, 2011), *aff'd*, 38 A.3d 1254 (Del. 2012). Delaware courts have warned "that although plaintiffs have 'a relatively light burden' to establish a prima facie basis for personal jurisdiction, the Court of Chancery has stated '[c]ourt[s] should exercise caution in extending jurisdiction over nonresident defendants whose direct ties to Delaware are, at best, tenuous." *Wiggins v. Physiologic Assessment Servs., LLC*, 138 A.3d 1160, 1165 (Del. Super. Ct. 2016) (quoting *Wakley Ltd. v. Ensotran, LLC*, 2014 WL 1116968, at *3 (D. Del. Mar. 18, 2014)).

The inquiry for Klein begins and ends with the first element of the personal jurisdiction inquiry because the Petition fails to set forth a basis for exercising jurisdiction over Klein under Delaware law. *See Instituto Bancario Italiano SpA v. Hunter Engineering Co., Inc.*, 449 A.2d 210, 228 (Del. 1982) (assessing the permissibility of service under the Long-Arm Statute, 10 *Del. C.* § 3104, when civil conspiracy is alleged). Indeed, Davis is required to make a *prima facie* showing,

in the allegations of the complaint, of personal jurisdiction over the respondents. *See LVI Grp. Invs., LLC v. NCM Grp. Holdings, LLC*, 2018 WL 1559936, at *7 (Del. Ch. Mar. 28, 2018). Davis fails to set forth a sufficient basis for the exercise of personal jurisdiction over Klein.

The Petition's *sole* purported basis for this Court to exercise jurisdiction over Klein is the "civil conspiracy theory of personal jurisdiction," setting out in a footnote that an alleged "conspiracy" existed between Klein and Beckett to 'hack' Davis's DDIS e-mail account.[6] (Pet. ¶ 9 n.2.) In an attempt to substantiate this theory, the Petition points to the e-mail chain incorporated as Exhibit C to the Petition. (*Id*. ¶ 9 n.2; Pet. Ex. C.) In that e-mail chain, Davis purportedly sends an e-mail to various officials within DNA and Döhler Group SE, including Klein, contending Beckett "has been having emails from [Davis's] account & that of Emma Nunes forwarded to his account." (Ex. C.) Neither this e-mail nor Klein's response contains any factual information demonstrating Klein's involvement in

[6] Although Davis presumably relies on the consent statute, 6 *Del. C.* § 18-109(a), for the exercise of jurisdiction over McCarroll, notably, Davis's conspiracy allegations against McCarroll are similarly – and fatally – scant. The sole conclusory allegation against McCarroll is that, as a former manager of DDIS, he "conspired with Klein to act in the best interests of DNA and the parent company of DNA--controlled by Klein--as opposed to fulfilling his fiduciary duty as manager to act in the best interest of the LLC and its members." (Pet. ¶ 24.) There is no explanation of how McCarroll allegedly did this or why that matters to this dissolution proceeding.

the alleged changes to the auto-forwarding rules for the e-mail accounts at issue much less 'hacking' Davis's account.[7] The plain language of the email simply does not reflect what Davis contends it does. (*Compare* Pet. Ex. C *with* Pet. ¶¶ 20-21.)

These allegations do not establish personal jurisdiction on the basis of civil conspiracy. The conspiracy theory alone "does not constitute an independent basis for subjecting an out-of-state resident to personal jurisdiction." *Hartsel*, 2011 WL 2421003, at *10. Further, "[t]he conspiracy theory of personal jurisdiction is narrowly and strictly construed; otherwise, that theory would become a facile way for a plaintiff to circumvent the minimum contacts requirement of *International Shoe Co. v. Washington*." *See Computer People, Inc. v. Best Int'l Grp., Inc.*, 1999 WL 288119, at *6 (Del. Ch. Apr. 27, 1999). Davis's Petition is such an attempted "facile way" to circumvent *International Shoe.*

To establish jurisdiction under this 'conspiracy theory' of jurisdiction, the plaintiff must show five elements:

> (1) a conspiracy...existed; (2) the defendant was a member of the conspiracy; (3) a substantial act or substantial effect in furtherance of the conspiracy *occurred in the forum state*; (4) the defendant knew or had reason to know the act in the forum state or that acts outside the forum state would have an effect in the forum state; and (5) the act in, or effect on, the forum state was a direct and foreseeable result of the conduct in furtherance of the conspiracy.

[7] The Petition also asserts, in conclusory fashion, that Klein "condoned, cooperated with, and benefited from the hacking" and "made statements to confirm that he endorses, benefits from, and participated in the hacking . . . ." (Pet. ¶¶ 21-22.) Exhibit C to the Petition does not provide a factual basis for either allegation.

Id. (quoting *Instituto*, 449 A.2d at 225) (emphasis added); *see also Altabef v. Neugarten*, 2021 WL 5919459, at *8 (Del. Ch. Dec. 15, 2021). In order to meet this test, "Delaware courts . . . require a plaintiff to assert specific facts, not conclusory allegations, as to each element." *Hartsel*, 2011 WL 2421003, at *10.

Although the Petition incorporates a conclusory recitation of certain of these elements (Pet. ¶ 9 n.2), the Petition fails to demonstrate "meaningful activity on behalf of the conspiracy *which occurred and caused effects in Delaware*." *Computer People*, 1999 WL 288119, at *6. Specifically, as it pertains to Section 3104(c)(3) of the Long-Arm Statute and the third conspiracy prong, "[e]ven if Plaintiffs alleged a breach of fiduciary duty or harm to [a Delaware entity] . . . so that the injury is deemed to have occurred in Delaware, '[l]iterally, Delaware law requires both a tortious act within the State and an act or omission within this State.'" *Altabef*, 2021 WL 5919459, at *11 n.116 (quoting *Ramada Inns, Inc. v. Drinkhall*, 1984 WL 247023, at *2 (Del. Super. May 17, 1984)); *Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *14 (Del. Ch. June 15, 2011) ("Although this Court has recognized financial harm to a Delaware business entity as a form of *injury* that has occurred in Delaware, it nonetheless has required, consistent with notions of due process, a factual showing that a tangible *act or omission* actually took place in Delaware.").

The Petition therefore misstates the elements of the 'conspiracy theory' of jurisdiction. It is not enough for Davis to allege, in the case of Klein, that Beckett is a manager of a Delaware LLC or that any of them purportedly caused harm to a Delaware LLC. Instead, for purposes of establishing personal jurisdiction under a conspiracy theory, the Petition must set forth some material, tangible act or omission that actually occurred in Delaware.[8] It utterly fails to do so. Accordingly, the Court must dismiss Klein as an individual respondent to this action.

III. Davis Seeks No Relief Against Respondents McCarroll or Klein.

McCarroll and Klein should also be dismissed as individual respondents from this litigation for the separate reason that the Petition does not seek any relief that can be awarded as against them. The Petition asserts claims for the dissolution and winding up of DDIS, neither of which require McCarroll's or Klein's involvement as respondents to effectuate. Thus, even if Davis and CKAL obtained their requested relief in full, no aspect of such relief would flow from either McCarroll or Klein. They are not real parties in interest.

As a former manager of DDIS, McCarroll lacks any authority to carry out any order of dissolution and winding up, even if he were enjoined to do so and,

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[8] The Petition appears to improperly conflate jurisdiction over Beckett as DDIS's manager under Delaware's consent statute, 6 *Del. C.* § 18-109(a), with whether an act or omission occurred within Delaware for purposes of establishing conspiracy jurisdiction. This, however, is inconsistent with the exercise of jurisdiction over Klein, a third-party who has not availed himself of this consent statute.

therefore, not even the consent statute should require him to participate as a party in this dissolution proceeding. *See VoterLabs, Inc. v. Ethos Grp. Consulting Servs., LLC*, 2021 WL 3403932, at *8 (D. Del. Aug. 4, 2021) (explaining that Section 18-109 of the Limited Liability Act's extension of personal jurisdiction over managers of a Delaware LLC requires the allegations to focus on the manager and centrally on "his rights, duties, and obligations"). Klein is not alleged to be a current or former manager of DDIS. Equity does not entertain requests for superfluous orders and ineffectual injunctions. *N. River Ins. Co. v. Mine Safety Appliances Co.*, 2013 WL 6713229, at *7 (Del. Ch. Dec. 20, 2013) ("[I]n line with the well-established principle that '[e]quity will not do a useless thing,' an injunction will 'not be granted where it would be ineffective to achieve its desired result.'"). The Court should therefore dismiss McCarroll and Klein as individual respondents.

IV. Davis Fails to State a Claim upon which Relief Can Be Granted.

When considering a motion to dismiss for failure to state a claim, the Court must "accept all well-pleaded factual allegations in the complaint as true, draw all reasonable inferences in favor of the plaintiff, and deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible to proof." *TransPerfect Global, Inc. v. Ross Aronstam & Moritz LLP*, 2022 WL 803484, at *10 (Del. Ch. Mar. 17, 2022) (cleaned up) (citing *Cent. Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 536 (Del.

2011)). This standard, however, does not require the Court "to accept conclusory allegations unsupported by specific facts or to draw unreasonable inferences in favor of the non-moving party." *Price v. E.I. DuPont de Nemours & Co.*, 26 A.3d 162, 166 (Del. 2011) (citing *Clinton v. Enterprise Rent–A–Car Co.*, 977 A.2d 892, 895 (Del. 2009), *overruled on other grounds, Ramsey v. Ga. S. Univ. Advanced Dev. Ctr.*, 189 A.3d 1255 (Del. 2018); *see also TransPerfect*, 2022 WL 803484 at *10-12 (granting motion to dismiss where plaintiff "failed to allege facts sufficient to establish" an element of its claim). Under this framework, Davis's Petition fails to state a claim upon which relief can be granted and, therefore, must be dismissed.

Judicial dissolution is not freely granted. "Given its extreme nature[,] judicial dissolution is a limited remedy that this court grants sparingly." *BET FRX LLC v. Myers*, 2022 WL 1236955, at *6 (Del. Ch. Apr. 27, 2022) (quoting *In re Arrow Inv. Advisors, LLC*, 2009 WL 1101682, at *2 (Del. Ch. Apr. 23, 2009) (citations omitted).

> A "court will not dissolve an LLC merely because the LLC has not experienced a smooth glide to profitability or because events have not turned out exactly as the LLC's owners originally envisioned." Rather, judicial dissolution is limited to "situations in which the LLC's management has become so dysfunctional or its business purpose so thwarted that it is no longer practicable to operate the business, such as in . . . a voting deadlock or where the defined purpose of the entity has become impossible to fulfill." Allegations that an LLC "is currently failing to achieve its 'business plan, goals, and objectives' [or] that [its] managers have breached their fiduciary duties fall far short of this threshold."

Id. (quoting *In re Arrow*, 2009 WL 1101682 at *2-3). Further, the ability of members to freely structure their relationship under an Operating Agreement "must be assiduously guarded lest the courts erode the primary attraction of limited liability companies," and "[t]he mere fact that the business relationship has now soured cannot justify the petitioners' attempt to disregard the agreement they made." *R & R Capital*, 2008 WL 3846318 at *7 (upholding contractual waiver of ability to seek statutory dissolution under Section 18–802).

The Petition's allegations fall *far* short of satisfying these arduous standards. As in *BET FRX*, Davis "does not allege voting deadlock; nor could [he]." *See BET FRX*, 2022 WL 1236955 at *7. To the contrary, Section 10(b) of the Operating Agreement provides a procedure for resolving deadlock, of which Davis does not seek to avail himself (or even reference). (*See* Pet., Ex. A. § 10(b).) Additionally, Davis "does not contend that [DDIS's] purpose has become impossible to fulfill; nor could [he]." *BET FRX*, 2022 WL 1236955 at *7. DDIS's corporate purposes are set forth in Section 1(b) of the Operating Agreement, and Davis does not contend that DDIS is not currently performing these functions. (*See* Pet., Ex. 5 § 1(b).)

Instead, Davis appears to base his request for dissolution on his removal as DDIS's manager (the permissibility of which he does not challenge under the Operating Agreement); his removal as a member of DDIS (which he claims to be

in breach of the cross-purchase procedures, and which the Federal Litigation will resolve); purported breaches of the Operating Agreement and fiduciary duties by members and managers, including the alleged 'hacking' of Davis's e-mail and an unarticulated "conspir[acy] to commit malfeasance" for the benefit of DNA. (Pet. ¶¶ 2, 16-24.) These allegations (even if true), however, do not rise to the level of corporate dysfunction required for judicial dissolution. Instead, such allegations are substantively indistinguishable from those similarly failed allegations recently rejected in *BET FRX*:

> As factual support for its claim for dissolution, Plaintiff does not allege voting deadlock; nor could it. Plaintiff does not contend that FRX's purpose has become impossible to fulfill; nor could it. Instead, Plaintiff premises the claim for dissolution on the sort of allegation unquestionably insufficient to support such a claim, that "[b]ecause FRX is a funding mechanism for FarmaRX, and because the members of FRX exhibit intractable differences of opinion as to the proper use of FRX funds, FRX cannot continue to carry out its business as required under the [LLC] Agreement." Mere disagreement, or even fiduciary breaches standing alone, do not support a claim for judicial dissolution.
>
> Count V for dissolution fails to state a claim.

BET FRX, 2022 WL 1236955 at *7.

Thus, *even if* everything Davis claims is true (which it is not), Davis's request for a judicial dissolution *still fails* as a matter of law. Without more, the Petition fails to set forth a conceivable basis for judicial dissolution, and should be dismissed. Further, because the claim for winding up the LLC relies upon the predicate claim for judicial dissolution, it too should be dismissed.

CONCLUSION

Davis's attempt to dissolve DDIS should end as hastily as it began. Davis's attempt to dissolve DDIS before the Federal Court compels his and CKAL's compliance with the cross-purchase provisions of the Operating Agreement is both jurisdictionally and substantively deficient. The Court should therefore dismiss with prejudice the Petition in full.

In the alternative, the Court may stay the Petition and any merits-based determination until the completion of the Federal Litigation, but still should dismiss Klein and McCarroll from this action.

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CERTIFICATE OF SERVICE

I, Kurt M. Heyman, hereby certify that on May 27, 2022, copies of Respondents Doehler North America Inc., Stuart McCarroll, and Andreas Klein's Brief in Support of Motion to Dismiss (with Exhibit A) were served electronically upon the following counsel:

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